

No. 920

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
FRANCE

Agreement for the settlement of inter-custodial conflicts relating to German enemy assets (with annex, declaration and letter). Signed at Brussels, on 15 July 1948

Official texts : English and French.

Registered by the United Kingdom of Great Britain and Northern Ireland on 2 October 1950.

ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
FRANCE

Accord pour le règlement des conflits interséquestres relatifs aux avoirs allemands ennemis (avec annexe, déclaration et lettre). Signé à Bruxelles, le 15 juillet 1948

Textes officiels anglais et français.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 2 octobre 1950.

No. 920. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE SETTLEMENT OF INTER-CUSTODIAL CONFLICTS RELATING TO GERMAN ENEMY ASSETS. SIGNED AT BRUSSELS, ON 15 JULY 1948

The Governments Parties to the present Agreement,

Desiring to resolve conflicting claims to German enemy assets within their respective jurisdictions and to facilitate the disposal of such assets to the common advantage :

Have agreed as follows :—

Article 1

In dealing with German enemy assets the Parties to the present Agreement (hereinafter and in the Annex hereto referred to as Parties) shall be guided as far as possible, in their relations with each other, by the provisions set forth in the present Agreement and in its Annex (hereinafter and in the Annex hereto together referred to as the Agreement), and shall take such action to give effect to the Agreement as may be necessary and appropriate.

Article 2

The Agreement shall not supersede any prior agreements concluded between any two or more Parties, or between a Party and another Government not a Party.

Nevertheless, when a prior agreement between a Party and another Government is deemed by a Party, not party to the prior agreement, to affect adversely its rights under the Agreement or those of its nationals, the Party who is also party to the prior agreement shall approach the other

¹ Came into force on 15 July 1948, by signature, in accordance with article 5. In accordance with article 8 of the Agreement, the Government of the United Kingdom notified the Belgian Government in a letter dated 15 July 1948, that His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland desired it to be known and understood that the terms of the Agreement were to be considered to be applicable forthwith, under article 8 of the Agreement, for the territories for the international relations of which His Majesty's Government were responsible.

Government in order to secure, if possible, such modification of the relevant provisions of the prior agreement as will render them consistent with the Agreement.

Article 3

Nothing in the Agreement shall preclude any Party or Parties from concluding in the future any separate agreement; provided that such subsequent agreement shall not affect adversely the rights under the Agreement of another Party not party to the subsequent agreement, or those of its nationals.

Article 4

If a dispute arises between two or more Parties with respect to the interpretation, implementation or application of the Agreement, such Parties shall endeavour by every means possible to settle such dispute by negotiation between themselves, which may include the use of a mutually acceptable conciliator with such powers as the Parties in dispute may agree.

Article 5

The Agreement shall come into force as soon as the present Agreement has been signed by any two Governments, Members of the Inter-Allied Reparation Agency, as between them, and the present Agreement shall thereupon become open for signature by any other Government, Member of the Inter-Allied Reparation Agency.

The present Agreement shall remain open for signature by any other Government, Member of the Inter-Allied Reparation Agency, for a period of six months from the date upon which it comes into force, and the Agreement shall become effective with respect to such Government immediately upon signature.

Article 6

If any Government which is not a member of the Inter-Allied Reparation Agency signifies in writing to the Government of Belgium within nine months of the date upon which the present Agreement comes into force that it desires to become a Party to the Agreement, or to a similar agreement, the Parties will consider in consultation with one another and with that Government its participation in such an agreement: provided that nothing in this Article shall be deemed to qualify any right of any Party under Article 3 above.

Article 7

Any Government to which the present Agreement is open for signature may, in lieu of signing, give notification of accession, in writing, to the Government of Belgium, and a Government making such notification of accession shall be deemed to have signed the present Agreement, in accordance with the provisions of Article 5 hereof, on the date of receipt of the notification by the Government of Belgium.

Article 8

Any Government which signs or accedes to the present Agreement may, at the time of signature, accession, or at any time thereafter, by notification given to the Government of Belgium, declare that the Agreement shall extend to any of the territories for the international relations of which it is responsible, and the Agreement shall, from the date of the receipt of the notification, or from such other date as may be specified in the notification, extend to the territories therein.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in Brussels on 15 July, 1948, in the English and French languages, the two texts being equally authentic, in a single original which shall be deposited in the Archives of the Government of Belgium. The Government of Belgium will furnish certified copies of the Agreement to each Government Signatory of the Paris Agreement on Reparation of January 24, 1946, and to each other Government on whose behalf the Agreement is signed, and will also inform those Governments of all signatures of the Agreement and of any notifications received thereunder.

For the Government of the United Kingdom
of Great Britain and Northern Ireland :
(Signed) Desmond MORTON

For the Government of the French Republic :
(Signed) Jacques RUEFF

ANNEX

PART I

PROPERTY OWNED BY GERMAN ENEMIES

Article 1

A. For the purpose of this Article, "security" means any stock, bond, debenture, share or, in general, any similar property known as a "security" in the country of issue.

B. Where a security owned by a German enemy has been issued by a Party or by a Government or private organisation or person within its territory but the certificate is in the territory of another Party, the certificate, whether in registered or in bearer form, shall be released to the former Party.

C. A German enemy owner of a certificate issued by an administration office, voting trustee or similar organisation or person, and indicating a participation in one or more specifically named securities, shall be regarded as the owner of the amount of securities specifically indicated, and Paragraph B of this Article shall apply to these securities.

D. A Party obliged under this Article to release a certificate shall not be required to release the income (in cash or otherwise) which has before July 1, 1947, been received in its territory by the releasing Party or by any person acting under its authority. Income received by such Party or person on or after July 1, 1947, shall be released to the Party entitled to the release of the certificate.

E. A Party obliged under this Article to release a certificate shall not be required to release the proceeds of any liquidation by sale, redemption or otherwise, which were, on December 31, 1946, in the form of cash or of securities issued by that Party or by a Governmental or private organisation or person within its territory, even if such cash was reinvested or such securities were sold or traded after that date. If the proceeds were, on December 31, 1946, in the form of securities issued by another Party or by a Governmental or private organisation or person within its territory, such securities (or the proceeds of their liquidation after that date) shall be released to the latter Party.

Article 2

A. For the purpose of this Article, "currency" means any notes, coins or other similar monetary media except those of numismatic or historical value.

B. Where currency has been issued by a Party or by a Governmental or private organisation acting under its authority but the currency is owned by a German enemy and is in the territory of another Party, the currency shall be released to the former Party.

C. Where currency has been sold before January 1, 1947, no release shall be required; but release of the proceeds shall be required if sale has taken place on or after January 1, 1947.

D. Nothing in this Article shall prejudice any rights or obligations which Parties may have under Part III of the Paris Agreement on Reparation.

Article 3

Where a negotiable instrument (such as a bill of exchange, promissory note, cheque or draft), not covered by Article 4 of this Annex, owned by a German enemy, is in the territory of a Party and the principal obligor is resident in the territory of another Party, the instrument shall be released to the latter Party.

Article 4

Where a bill of lading, warehouse receipt or other similar instrument, whether or not negotiable, owned by a German enemy, is in the territory of a Party but the property to which it relates is located in the territory of another Party, the instrument shall be released to the latter Party.

Article 5

A. A foreign currency account ("primary account") maintained in favour of a German enemy by a financial institution in the territory of a Party ("primary country") covered in whole or in part by an account ("cover account") with a financial institution in the territory of another Party ("secondary country") shall be treated as follows:

- (i) The cover account shall be released.
- (ii) Where the secondary country has vested or otherwise taken under custodian control the income from German enemy property situated in the secondary country or the proceeds of the liquidation of German enemy-owned securities issued by the secondary country or by a Governmental or private organisation or person within its territory and which securities were held in a custody or depot account, such income or such proceeds may be retained by the secondary country and sub-paragraph (i) of this Paragraph shall not apply thereto.

B. For the purpose of this Article, accounts shall include named, numbered or otherwise specially designated accounts and sub-accounts as well as undesignated accounts and sub-accounts.

Article 6

Where property covered by this Part is owned partly by a German enemy and partly by a non-enemy, the method of segregating the respective interests and releasing the enemy interests shall be determined by agreement between the interested Parties. The German enemy interests shall then be released to the Party which would have been entitled to the property if it had been wholly German enemy-owned.

PART II

DECEASED'S ESTATES, TRUSTS AND OTHER FIDUCIARY ARRANGEMENTS
UNDER WHICH A GERMAN ENEMY HAS AN INTEREST*Article 7*

A. Except as provided in Paragraph B of this Article, property within the jurisdiction of a Party, forming part of the estate of a non-enemy person who has died domiciled in the territory of another Party, in which estate a German enemy has an interest whether as a beneficiary or creditor, shall be released from control of the custodian authorities of the former Party with a view to facilitating normal administration of the estate in the territory of the latter Party. Property so released shall be subject to the application of the laws of the releasing Party governing administration and distribution of the deceased's estates. When under such laws distribution of the deceased's estate is made directly to the persons who have an interest in the estate, the releasing Party shall take appropriate action to assist in making available to the other Party the distributive share of each German enemy.

B. Notwithstanding the provisions of Paragraph A of this Article, where a non-enemy domiciled in the territory of one Party has died owning immovable property in the territory of another Party and an interest in the property devolves upon or is to be distributed to a German enemy under the will of the deceased or under the applicable laws of descent, the interest may be retained by the latter Party, subject to the rights of non-enemy creditors of the deceased or of non-enemy heirs to whom, under applicable law, a portion of the immovable property is reserved.

C. This article shall not apply to any property to the estate of a deceased if the property was administered and distributed before the Party in whose territory the property was located instituted war-time emergency measures applicable to the administration and distribution of the property of the deceased.

D. For the purposes of this Article, the domicile of a deceased shall be determined according to the law of the Party within whose jurisdiction the property is located.

Article 8

Property within the jurisdiction of a Party which is held under a *bona fide* trust or other *bona fide* fiduciary arrangement in which a German enemy has an interest as a beneficiary or otherwise, and which trust or fiduciary arrangement is being administered under the laws of another Party, shall be released from the control of the custodian authorities of the former Party, except that such Party may retain any interest of a German enemy in immovable property located in its territory. Such release shall not be obligatory under this Part of this Annex in cases where the trust or other fiduciary arrangement was established by a person resident in Germany, or a German enemy, or a person who subsequently became a German enemy.

Article 9

The Party in favour of which property is released under this Part of this Annex shall recognise the rights of non-enemies in the estate, trust or other fiduciary arrangement.

Article 10

The principles of Part I of this Annex shall not be applicable to property released under this Part or distributed to the custodian authorities of a Party from an estate, *bona fide* trust or other *bona fide* fiduciary arrangement governed by this Part.

PART III

PROPERTY OWNED BY ENTERPRISES ORGANISED UNDER THE LAWS OF A PARTY

Article 11

The provisions of this Part shall apply to assets in the territories under the jurisdiction of a Party—referred to as secondary country—and belonging to an organisation or enterprise—referred to as primary enterprise—which constitutes in law or in fact a corporation of individuals or of capital organised under the law of another Party—referred to as primary country—in which there were, on the material date, direct or indirect German enemy interests.

Article 12

Where the assets of a primary enterprise are claimed by the Government of a secondary country as German enemy property, the Government of the primary enterprise shall be entitled to approach the Government of the secondary country with a view to deciding in consultation :

- (a) whether, on the material date, the primary enterprise or the assets in question were German-controlled;

- (b) the percentage of direct and indirect German enemy interest in the primary enterprise at the material date if the enterprise or the assets were so controlled;
- (c) the identification of the assets which, located in the secondary country, belonged directly or indirectly to the primary enterprise.

For the purpose of this article a primary enterprise shall be deemed to be German-controlled if at the material date Germans enemies held directly or indirectly :

- (i) 50 per cent. or more of the voting rights, outstanding capital stock or other proprietorship interests, or
- (ii) participating rights in a voting trust arrangement which rights, represented 50 per cent. or more of such voting rights, outstanding capital stock or other proprietorship interests, or
- (iii) if at the material date German enemies directly or indirectly controlled the policy, management, voting power or operations of the enterprise.

The assets in the secondary country of a primary enterprise which is not German-controlled shall nevertheless be deemed to be German-controlled if at the material date German enemies directly or indirectly controlled the policy, management, use or operation of the property.

Article 13

Each secondary Government :

- (a) reserves its rights under Article 6 A Part I of the Paris Agreement to realise for its own account assets recognised as being German enemy assets;
- (b) agrees notwithstanding sub-paragraph (a) that assets in the secondary country which are not German-controlled or which belong to a primary enterprise which is not German-controlled shall be released forthwith.

Article 14

The Parties, recognising that the realisation of assets by one Party may be harmful to the economy of another and may be prejudicial to non-enemy interests in the primary enterprise, express their willingness to enter into special agreements to mitigate the consequences of realisation. Any discussions shall be without prejudice to Articles 12 and 13 (a) above.

Any agreement entered into may provide for reimbursement to the Government of the secondary country by the Government of the primary country or any other form of compensation.

Article 14 shall not apply to property covered by Article 19.

Article 15

The provisions of Part III shall be without prejudice to the application of the provisions of Parts I and II.

PART IV

INTERPRETATION AND APPLICATION

Article 16

A. A Party obliged under the Agreement to release property shall not be required to reverse any act of liquidation which has been carried out by sale, redemption or otherwise. The vesting, sequestration or confiscation of property shall not be regarded as constituting liquidation for the purposes of the Agreement.

B. Where, in the territory within the jurisdiction of a Party, there shall have taken place the liquidation, as a German external asset, of an asset whose non-enemy character under the terms of the present Agreement should later be established, the net proceeds of the liquidation of this asset shall be repaid to the legitimate claimant in the currency of the liquidating country and in conformity with the legislation of this country.

C. The request for repayment shall be submitted within a period of one year to start from the date of the publication of this Agreement.

Article 17

A. The special agreements which may be reached to settle inter-custodial conflicts between the Governments of Parties shall take constantly into consideration the objects and directives laid down in the common interest in the present general Agreement.

B. Such special agreements shall be concluded and carried out in such a way as to avoid harming non-enemy interests.

C. They shall without prejudice to the application of the provisions of the general Agreement, should one of their signatories have given their adhesion to it.

D. They shall be notified for information to the Secretary-General of the Inter-Allied Reparation Agency.

Article 18

A. Nothing in the Agreement shall oblige any Party to recognise :

- (i) any transfer of, or other transaction relating to, a German enemy interest occurring after the institution of war-time emergency measures by that Party or after the invasion of the territory of that Party by Germany;

- (ii) any transfer of non-enemy property in Germany to German enemies, or any assumption by German enemies from non-enemies, of control over property in Germany, which was forced without adequate consideration by action of the Government of Germany whether before or after September 1, 1939. This sub-paragraph shall apply only to property of, or controlled by, non-enemies who were nationals of Parties at the time of the transfer of the property or the assumption of control over the property.

B. In determining whether any property is owned or controlled by a German enemy no transfer to a German enemy or dealings with a German enemy shall be taken into account which represent looting or forced transfers within the meaning of the Inter-Allied Declaration of January 5, 1943, against Acts of Dispossession.

Article 19

Property which is held for the benefit of a German enemy by any individual or body of persons, corporate or unincorporate, as a cloak, nominee, agent, trustee or in any other capacity, shall be regarded as directly owned by that German enemy. The question of recognising any interest which the holder of such property may claim therein shall not be prejudiced by the foregoing but shall be resolved in each case by negotiation between the Parties concerned.

Article 20

The assertion of custodian control over a German enemy interest in property within the territory of one Party shall not be deemed to have destroyed the German enemy interest in property within the territory of another Party.

Article 21

A branch or other similar office within the territory of a Party of any enterprise organised under the laws of another country shall be regarded as a separate entity located within the territory of the Party. A partnership having its principal office in the territory of any Party shall be regarded as an enterprise located in that territory regardless of the residence or domicile of the partners.

Article 22

Where under the Agreement special problems arise respecting a complex organisation having subsidiary or affiliated organisations with properties within the territories of several of the Parties, a committee composed of representative of each of the interested Parties may be constituted to consider the problems and make recommendations for their solution.

Article 23

Parties shall exchange information and otherwise co-operate for the purpose of giving effect to the Agreement; provided that information given pursuant hereto shall be regarded as confidential by the Party receiving it, which undertakes to use it exclusively for the purpose of implementing the Agreement and the Paris Agreement on Reparation of January 24, 1946.

Article 24

Nothing in the Agreement shall be construed to confer any right on an individual or body of persons, corporate or unincorporate, to prosecute a claim in any court or administrative tribunal against his or their Government or against any other Party.

Article 25

In this Annex :

- (i) the term "property" shall include all rights, titles and interests in property;
- (ii) the expression "war-time emergency measures" means the measures for the control of German enemy owned property, or of transactions by or on behalf of German enemies taken by a Party on or after September 1, 1939, whether or not taken prior to that Government's actual participation in the war;
- (iii) the expression "the material date" means the day on which the secondary country as defined in Part III of this Annex came into the war or took war-emergency measures, whichever is earlier.

DECLARATION

The Governments of the Republic of France and of the United Kingdom of Great Britain and Northern Ireland,

Accepting that the burden of reparation ought to fall on Germany and not on Allied nationals, agree in principle that external capital assets of companies of German incorporation, in which there is a substantial non-German interest should, so far as practicable, be excluded from the part of German property considered to be available as reparation;

Recognising the complexity and variety of particular cases, each of the above-mentioned Governments is willing to negotiate with any other Government an Agreement giving effect to the foregoing principle in dealing

with assets within its jurisdiction of the description afore-mentioned in which assets the other Government has any interest.

SIGNED in Brussels on the 15th July, 1948, in the English and French languages, the two texts being equally authentic.

For the Government of the United Kingdom
of Great Britain and Northern Ireland :

(Signed) Desmond MORTON

For the Government of the French Republic :

(Signed) Jacques RUEFF

L E T T E R

FROM UNITED KINGDOM DELEGATE TO THE INTER-ALLIED REPARATION
AGENCY REGARDING THE APPLICATION OF THE AGREEMENT TO OVERSEAS
TERRITORIES

Brussels, 15 July, 1948

Sir,

I have the honour to inform you with reference to the Franco-British Agreement on the Settlement of Inter-Custodial Conflicts relating to German Enemy Assets, which was signed this morning in the offices of the Belgian Government, that His Majesty's Government of Great Britain and Northern Ireland desires to inform all concerned that, in accordance with Article 8 of the said Agreement, this Agreement shall from to-morrow extend to the territories for the international relations of which His Majesty's Government is responsible.

I would be obliged, therefore, if you would cause this information to be known to the Delegates of all Governments members of the Inter-Allied Reparation Agency.

I have, etc.

(Signed) Desmond MORTON